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In re Patent No.:5,682,074  
issue Date: October 28, 1997  
Application No. 08/205,045  
Filed: March 2, 1994  
Inventor: Di Pietro et al.

This is a decision on the petition filed April 26, 2005, which is being treated as a petition under 37 CFR 1.377(no fee) to review the refusal of the USPTO to accept and record a timely filed maintenance fee for the above-identified patent. The delay in treating this petition is regretted

The petition is granted. This decision also constitutes patentee's notice of the acceptance of a timely maintenance fee payment.

Petitioner includes a copy of a Treasury check refunding the timely (USPTO receipt date of February 18, 2005) 7 ½ year fee payment transmittal and a copy of a previous decision by the undersigned indicating that a petition for acceptance of the 3 ½ year maintenance fee was moot as the patent in fact had been maintained in force through the 8<sup>th</sup> anniversary date.

Clearly the recent refusal to accept the timely 7 ½ payment is a USPTO error as is any indication that this patent expired on March 18, 2002. Unfortunately, it appears the logged "dismissal" as an adverse decision of the previous, unnecessary petition has somehow "fooled" some part of the USPTO data record system into assuming that the patent had not been maintained in force, notwithstanding that the same system records clearly show that the 3 ½ year fee had been accepted.

Where, as here, the USPTO erred in not accepting a timely payment, no fee is involved. The maintenance fee of \$1215 is being accepted with a receipt date of February 18, 2005, and the request that the USPTO refund the \$200 petition fee as unnecessary is likewise being granted. The inconvenience to patentee is sincerely regretted. This favorable decision logged into the system should also prevent this same problem from recurring for the 11 ½ year fee payment

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3217.

Brian Hearn  
Senior Petitions Examiner  
Office of Petitions